

REMARKS

Claims 1-27 are pending. Applicant has amended claims 1 and 8 and added new claim 67 in the specification as shown above. Support for the amendments and new claim can be found throughout the specification, for example, at Figures 1 and 2. Accordingly, the amendments and new claim do not raise an issue of new matter and entry thereof is respectfully requested. Claims 28-66 were previously canceled without prejudice or disclaimer. Without addressing the merits of the rejections set forth in the Office Action mailed September 26, 2007, Applicant has canceled claims 2-7 and 9-27 without prejudice or disclaimer and reserve the right to claim the canceled subject matter in a corresponding divisional application. Applicant has reviewed the final Office Action mailed September 26, 2007, and respectfully traverse all grounds of rejections for the reasons that follow.

Rejection Under 35 U.S.C. § 102

Claims 1, 4, 5, 6 and 9, stand rejected under 35 U.S.C. § 102(b) for allegedly being anticipated by Barker et al., WO 00/76492, hereafter “Barker”. As claims 4, 5, 6 and 9 have been canceled the rejection as it applies to these claims is rendered moot. Withdrawal is respectfully requested. With respect to claim 1, the Office Action alleges that Barker describes a combination of nutrients including: vitamin E (50-500 IU); vitamin C (60-500 mg); selenium (20-300 µg); N-acetyl-L-cysteine (500-2000 mg); curcumin (5-50 mg); mixed polyphenols (500-1500 mg green tea extract), and mixed carotenoids (500-2000 mg mixed vegetable extract) and concludes that carotenoids, polyphenols and N-acetyl-L-cysteine correspond to three high potency antioxidants.

Without acquiescing to the reasoning offered in the Office Action, Applicant has amended claim 1 and added new claim 67 in order to provide greater particularity to the claims and those claims depending therefrom. Claim 1 now recites components that define the invention, which include, in part, specified amounts of the claimed vitamin, mineral and high potency antioxidants. Support for the claim amendment and new claim 67 can be found for example, at Figures 1 and 2 of the specification as filed. Because Barker does not expressly teach the compositions in the specified amounts recited in amended claim 1 and new claim 67, it

cannot anticipate the present invention. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Rejection under 35 U.S.C. § 103(a)

Claims 1-27 stand rejected under 35 U.S.C. §103(a) as being allegedly obvious over Kosbab (US 2001/003744), hereinafter "Kosbab". As discussed, claims 2-7 and 9-27 have been canceled. Therefore, the rejection as it applies to these claims is rendered moot. Withdrawal of the rejection is respectfully requested.

To establish a *prima facie* case of obviousness, the Office must show that the prior art would have suggested the claimed invention to one of ordinary skill in the art and that it could have been carried out with a reasonable likelihood of success when viewed in the light of the prior art. *Brown & Williamson Tobacco v. Philip Morris*, 229 F.3d 1120, 1124 (Fed. Cir. 2000), accord *In re Royka*, 180 USPQ 580 (C.C.P.A. 1974) (to establish *prima facie* obviousness, all claim limitations must be taught or suggested by the prior art); M.P.E.P. §2143.03. Further, the law is clear that there must be a teaching, suggestion or motivation to arrive at the claimed invention. As articulated by the court in *Pfizer v. Apotex, Inc.*, Case No. 2006-1261 (Fed. Cir., March 22, 2007), selection of components from an indefinite list constitutes a promising field of experimentation. Such selection is unobvious and is not comparable to varying known parameters from a finite list with the expectation that one of the varied parameters will work.

Without acquiescing to the reasoning offered in the Office Action Applicant has amended claims 1 and 8 and added claim 67 to provide greater particularity to the claims. As such, the rejection as it applies to the claims is rendered moot. The claims now recite, specific amounts of the claimed antioxidants as well as vitamins and minerals of the invention. Support for the claim amendments and newly added claim can be found for example, at Figures 1 and 2 of the specification as filed. Because the cited reference neither teaches or suggests the claimed components and specified amounts of the amended claims, no *prima facie* case of obviousness has been established.

Applicant submits that the formulas of Kosbab generally consist of a heterogeneous mixture of numerous, diverse compounds with no apparent rationale for the specified amounts of vitamins, minerals and antioxidants recited in amended claim 1 and new claim 67. As such, the

skilled artisan would have no reasonable expectation of success in arriving at the present invention based on the teachings of Kosbab alone. In light of the amended claims and new claim 67, the rejection as it applies to the claims is rendered moot and Applicant respectfully requests withdrawal of the rejection.

Claims 1-27 stand rejected under 35 U.S.C. §103(a) as being allegedly obvious over Gorsek (U.S. Patent No. 6,103,756, hereafter “Gorsek”) in view of Ames et al., (U.S. 5,916,912, hereafter “Ames”) and Kosbab. The arguments presented above relating to Kosbab apply equally to this rejection and are incorporated here. As discussed, claims 2-7 and 9-27 have been canceled. As such, the rejection as it applies to these claims is rendered moot. Withdrawal of the rejection is respectfully requested.

Applicant submits that the cited references do not teach or suggest all the claim limitations of the present invention because as amended, claims 1 and 8 and new claim 67, provide specific components and amounts for the present invention and consist of limitations which are not taught nor suggested by Gorsek, Ames or Kosbab, considered independently or in combination. In fact, as pointed out in Applicant’s previous response, (filed September 20, 2006, page 18, para 1 and 2) Ames actually teaches away from combining acetyl L-carnitine in other formulations for the purpose of increasing the metabolic rate of aged cells because Ames describes that their formulation restored all mitochondrial functions and reversed gross indicia of aging. In other words, Ames teaches that two antioxidants achieve the intended purpose and hence, one of ordinary skill in the art would not be motivated to include additional antioxidants in any of the formulations of Gorsek, Kosbab or Ames because there is no need to include more antioxidants. In light of the amended claims, new claim 67 and the reasons of record, Applicant submits that the rejection as it applies to the claims is rendered moot. Withdrawal of the rejection is respectfully requested.

Claims 1-27 stand rejected under 35 U.S.C. §103(a) as being allegedly obvious over Barker, in view of Ames and Kosbab. The arguments above regarding Ames and Kosbab apply equally to this rejection and are incorporated here. As discussed, claims 2-7 and 9-27 have been canceled. Therefore, the rejection as it applies to these claims is rendered moot. Withdrawal of the rejection is respectfully requested.

Applicant submits that the cited references do not teach or suggest all the claim limitations of the present invention because as amended, claims 1 and 8 and new claim 67, provide specific components and amounts of the present invention, limitations which are neither taught or suggested by Barker, Ames or Kosbab.

Applicant submits that Barker fails to teach or suggest a composition consisting of high potency antioxidants in the amounts recited in claim 1 and new claim 67. Moreover, Ames and Kosbab fail to cure the deficiencies of Barker since neither teach or suggest the claimed components in the specified amounts recited in the claims. Given the deficiencies of the cited references the skilled person would have no reasonable expectation of success in arriving at the present invention. In this instance, Barker is more generally directed to a combination of nutrients including: vitamins E and C, selenium, N-acetyl-L-cysteine, curcumin, mixed polyphenols, and mixed carotenoids, not to the immune augmenting nutrient compositions of the present invention. In light of the amended claims and new claim 67, Applicant respectfully submits that the rejection as it applies to the claims is rendered moot. Withdrawal of the rejection is respectfully requested.

CONCLUSION

Applicant submits that these amendments and new claim do not raise an issue of new matter and entry thereof is respectfully requested. Entry of the proposed amendments and new claim is respectfully submitted to be proper and Applicant submits that in light thereof, the claims are now in condition for allowance and respectfully request a notice to this effect. The Examiner is invited to call the undersigned agent if there are any questions.

Application No.: 10/750,545

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 502624 and please credit any excess fees to such deposit account.

Respectfully submitted,

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